



proceeded to the front of the clinic and interpreted for the Spanish-speaking patient as requested. Claimant alleges that she told Margaret Filger, her supervisor, of the accident on that day. Claimant also identified three co-employees whom she discussed her injury with: Deborah, Janette and Heather.

Claimant did not request medical treatment until June 30, 2000. At that time, she was referred by one of the clinic doctors to physical therapy because she was limping. She was advised at physical therapy that her problem was in her back, not her leg, and was then referred for more extensive medical treatment.

Respondent representative, Margaret Filger, was the only other witness to testify. Both claimant and Ms. Filger testified before the Administrative Law Judge at preliminary hearing. Ms. Filger, the clinic coordinator, has known and worked with claimant for eleven years. She identified her as being a good worker and an honest person. However, when asked about whether claimant advised her on May 5, 2000, of the accident, she testified that she had not been advised by claimant on that date of any such accident. She also testified, after referring to her planner, that she was not in the clinic on that date, but instead took part of the day as a personal day and the remainder of the day was away from the clinic on company business. She went on to testify that of the three co-employees named by claimant, two could not possibly have been told of the accident on the date alleged. Janette, claimant's coworker, had been transferred to the Olathe clinic before May 5, 2000, and did not return to respondent's clinic until May 30, 2000. Heather, another worker named by claimant, was not working on May 5, 2000, because she had suffered a workers' compensation injury and was undergoing surgery on that day.

There is no information in the record or in the testimony regarding Deborah, the third individual named by claimant. Additionally, none of the co-employees testified at preliminary hearing. Therefore, they neither verified nor contradicted either claimant or Ms. Filger's testimony.

In workers' compensation litigation, the burden of proof is on claimant to prove his or her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g).

Here, of the four witnesses named by claimant, three were allegedly not present in the office on the date claimant claims injury. Claimant testified that she told all four on that date of her injury. Respondent denies claimant mentioned the incident at any time prior to June 30, 2000, when she first sought medical treatment. Without some corroborating testimony, claimant has only her word against that of Margaret Filger to support her allegation that she notified respondent of the accident. Additionally, the testimony of Ms. Filger contradicts claimant's allegations that witnesses Janette and Heather were even in the clinic on the date alleged.

When facts are in dispute, the administrative law judge is in the enviable position of being able to ascertain the credibility of witnesses who testify before him or her. The Appeals Board gives some credence to this opportunity on the part of the administrative law judge to ascertain witness reliability. In this instance, the Administrative Law Judge noted in the Order that her decision to find the claim compensable was “[a]fter observing the testimony and demeanor of both the Claimant and Margaret Filger”. The Board can only assume that the Administrative Law Judge found something about Ms. Filger’s testimony to question. There is, otherwise, no reason for finding this claim compensable when three out of four of claimant’s purported witnesses were claimed to be absent on the alleged date of accident.

The Appeals Board will, therefore, give deference to the Administrative Law Judge’s assessment of the witness credibility in this instance and find this matter to be compensable.

It should, however, be noted that preliminary orders are, indeed, preliminary in nature and are not binding in a full hearing, but are subject to a full presentation of the facts.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated September 8, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2000.

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BOARD MEMBER

c: Timothy M. Alvarez, Kansas City, MO  
Steven J. Quinn, Kansas City, MO  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director